



# UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE  
United States Patent and Trademark Office  
Address: COMMISSIONER FOR PATENTS  
P.O. Box 1450  
Alexandria, Virginia 22313-1450  
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/092,895	03/08/2002	Hiroshi Sukegawa	220515US2S	2724

22850 7590 10/18/2005

OBLON, SPIVAK, MCCLELLAND, MAIER & NEUSTADT, P.C.  
1940 DUKE STREET  
ALEXANDRIA, VA 22314

EXAMINER
----------

RHODE JR, ROBERT E

ART UNIT	PAPER NUMBER
----------	--------------

3625

DATE MAILED: 10/18/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>		<b>Applicant(s)</b>	
	10/092,895		SUKEGAWA, HIROSHI	
	<b>Examiner</b>		<b>Art Unit</b>	
	Rob Rhode		3625	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 04 August 2005.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 47-50 is/are pending in the application.
- 4a) Of the above claim(s) 6-46 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-5 and 47-50 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
    Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)                        | 4) <input type="checkbox"/> Interview Summary (PTO-413)                     |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)               | Paper No(s)/Mail Date. _____  |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                                    |

## **DETAILED ACTION**

### ***Response to Amendment***

Applicant amendment of 8-4-05 amended claims 1, 5 and added new claims 47 - 50 as well as traversed rejections of Claims 1 - 5.

Currently, claims 1- 5 and 47 - 50 are pending.

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claim 5 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In Claim 5, the word "frequency " is a relative word, which renders the claims indefinite. The word " frequency " is not defined by the claim(s), the specification does not provide a standard for ascertaining the requisite degree, and one of ordinary skill in the art would not be reasonably appraised of the scope of the invention. For examination purposes the word "frequency" will be treated the number of times content can be reproduced.

***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

- A person shall be entitled to a patent unless –
  - (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

**Claims 1 – 5 and 47 – 50 are rejected under 35 U.S.C. 102(e) as being anticipated by Spagna (US 6,587,837 B1).**

Regarding Claim 1 (Currently Amended), Spagna teaches a music distribution method comprising:

receiving by a server a request to distribute music information from a music reproduction apparatus through a communication medium (see at least Abstract, Col 2, lines 58 – 64, Col 28, lines 66 – 67, Col 82, lines 24 – 34 and Figures 5 – 7);

generating by said server a distribution file in which said music information requested and information concerning settings and conditions required for transmitting information from said music reproduction apparatus to said server are integrated; distributing by said server said distribution file to said music reproduction apparatus through said communication medium ((see at least Col 5, lines 9 – 42 and Figure 13);

receiving by said server through said communication medium a number of times of reproduction with attribution of said music information reproduced by said music reproduction apparatus (see at least Col 4, lines 26 – 32, Col 13, lines 31 – 37 and Col 23, lines 50 – 52); and

identifying a copyright holder to whom a copyright fee should be paid based on said music information reproduced by said music reproduction apparatus. and paying said copyright fee (see at least Col 10, lines 22 – 24, Col 11, lines 8 – 16 and 26 – 34, Col 15, lines 44 – 51 and Col 90, lines 38 – 40).

Regarding Claim 2 (original), Spagna teaches a music distribution method, further comprising requesting by said server to said music reproduction apparatus through said communication medium payment of a music-listening fee in accordance with said number of times of reproduction of said music information (Col 2, lines 61 – 64, Col 4, lines 22 – 32, Col 11, 30 – 34 and Col 12, lines 23 – 33).

Regarding Claim 3 (original), Spagna teaches a music distribution method, wherein said communication medium is the Internet (Col 25, line 36).

Regarding Claim 4 (Original), Spagna teaches a music distribution method, wherein said information concerning said settings and conditions includes an Internet IP address required for reporting said number of times of reproduction of said music information from said music reproduction apparatus to said server (Col 4, lines 22 – 23).

Regarding Claim 5 (Currently Amended), Spagna teaches a music reproduction method, wherein said server receives said number of times of reproduction of said music information at a given frequency (Col 4, lines 26 – 32, Col 13, lines 31 – 37 and Col 23, lines 50 – 52).

Regarding Claim 47 (New), Spagna teaches a music reproduction method, wherein said music information distributed to said music reproduction apparatus is stored in a nonvolatile semiconductor memory in said music reproduction apparatus and. Claim 48 (New) wherein said nonvolatile semiconductor memory includes a flash memory (Col 22, line 23). Please note that Spagna does not specifically disclose nonvolatile nor flash memory. However, Spagna does disclose memory. Moreover, these types of memory were old and well known at the time of the applicant's invention. Thereby, one of ordinary skill would have been motivated to extend the memory types of Spagna with nonvolatile and flash to ensure that content is not lost, which has been saved.

Regarding Claim 49 (New) and related claim 50 (New), Spagna teaches a music distribution method, wherein said distribution file has a header information portion and a main body information portion arranged under said header information portion, and a structure in which said information concerning settings and conditions are recorded in said header information portion, and said music information is recorded in said main body information portion (Col 20, lines 14 – 59 and Col 29, lines 4 – 14).

### ***Response to Arguments***

Applicant's arguments with respect to claims 1 – 5 and 47 - 50 have been considered but are moot in view of the new ground(s) of rejection.

### ***Conclusion***

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **Rob Rhode** whose telephone number is **571.272.6761**. The examiner can normally be reached Monday thru Friday 8:00 AM to 5:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, **Wynn Coggins** can be reached on **571.272.7159**.

Any response to this action should be mailed to:

***Commissioner for Patents***

***P.O. Box 1450***

**Alexandria, Va. 22313-1450**

or faxed to:

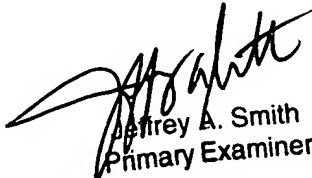
**571-273-8300** [Official communications; including  
After Final communications labeled  
"Box AF"]

For general questions the receptionist can be reached at  
**571.272.3600**

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR.

Status information for unpublished applications is available through Private PAIR only.

For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). RER

  
Jeffrey A. Smith  
Primary Examiner